

AMENDED IN SENATE JUNE 20, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2912

Introduced by Committee on Natural Resources

March 15, 2016

An act to amend Section 5654 of the Fish and Game Code, and to amend Sections 8670.3, 8670.25.5, 8670.27, 8670.29, 8670.31, 8670.37.58, 8670.54, 8670.56.5, 8670.56.6, and 8670.59 of the Government Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 2912, as amended, Committee on Natural Resources. Oil spills.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup. The act requires each owner or operator of a tank vessel, nontank vessel carrying oil as a secondary cargo, or facility to submit, upon request of the administrator, a copy of a federally approved oil spill response plan at the time of approval of the plan.

This bill would instead require each owner or operator of a tank vessel, nontank vessel, vessel carrying oil as a secondary cargo, or facility to submit, upon request of the administrator, a copy of a federally approved oil spill response plan at the time of approval of the plan. The bill also *would revise and add various definitions within the act and* would make nonsubstantive changes to these and other provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 5654 of the Fish and Game Code is amended to read:

5654. (a) (1) Notwithstanding Section 7715 and except as provided in paragraph (2), the director, within 24 hours of notification of a spill or discharge, as those terms are defined in Section 8670.3 of the Government Code, where any fishing, including all commercial, recreational, and nonlicensed subsistence fishing, may take place, or where aquaculture operations are taking place, shall close to the take of all fish and shellfish all waters in the vicinity of the spill or discharge or where the spilled or discharged material has spread, or is likely to spread. In determining where a spill or discharge is likely to spread, the director shall consult with the Administrator of the Office of Spill Prevention and Response. At the time of closure, the department shall make all reasonable efforts to notify the public of the closure, including notification to commercial and recreational fishing organizations, and posting of warnings on public piers and other locations where subsistence fishing is known to occur. The department shall coordinate, when possible, with local and regional agencies and organizations to expedite public notification.

(2) Closure pursuant to paragraph (1) is not required if, within 24 hours of notification of a spill or discharge, the Office of Environmental Health Hazard Assessment finds that a public health threat does not or is unlikely to exist.

(b) Within 48 hours of notification of a spill or discharge subject to subdivision (a), the director, in consultation with the Office of Environmental Health Hazard Assessment, shall make an assessment and determine all of the following:

(1) The danger posed to the public from fishing in the area where the spill or discharge occurred or spread, and the danger of consuming fish taken in the area where the spill or discharge occurred or spread.

(2) Whether the areas closed for the take of fish or shellfish should be expanded to prevent any potential take or consumption of any fish or shellfish that may have been contaminated by the spill or discharge.

(3) The likely period for maintaining a closure on the take of fish and shellfish in order to prevent any possible contaminated

1 fish or shellfish from being taken or consumed or other threats to
2 human health.

3 (c) Within 48 hours after receiving notification of a spill or
4 discharge subject to subdivision (a), or as soon as is feasible, the
5 director, in consultation with the Office of Environmental Health
6 Hazard Assessment, shall assess and determine the potential danger
7 from consuming fish that have been contained in a recirculating
8 seawater tank onboard a vessel that may become contaminated by
9 the vessel's movement through an area where the spill or discharge
10 occurred or spread.

11 (d) If the director finds in his or her assessment pursuant to
12 subdivision (b) that there is no significant risk to the public or to
13 the fisheries, the director may immediately reopen the closed area
14 and waive the testing requirements of subdivisions (e) and (f).

15 (e) Except under the conditions specified in subdivision (d),
16 after complying with subdivisions (a) and (b), the director, in
17 consultation with the Office of Environmental Health Hazard
18 Assessment, but in no event more than seven days from the
19 notification of the spill or discharge, shall order expedited tests of
20 fish and shellfish that would have been open for take for
21 commercial, recreational, or subsistence purposes in the closed
22 area if not for the closure, to determine the levels of contamination,
23 if any, and whether the fish or shellfish is safe for human
24 consumption.

25 (f) (1) Within 24 hours of receiving a notification from the
26 Office of Environmental Health Hazard Assessment that no threat
27 to human health exists from the spill or discharge or that no
28 contaminant from the spill or discharge is present that could
29 contaminate fish or shellfish, the director shall reopen the areas
30 closed pursuant to this section. The director may maintain a closure
31 in any remaining portion of the closed area where the Office of
32 Environmental Health Hazard Assessment finds contamination
33 from the spill or discharge persists that may adversely affect human
34 health.

35 (2) The director, in consultation with the commission, may also
36 maintain a closure in any remaining portion of the closed area
37 where commercial fishing or aquaculture occurs and where the
38 department determines, pursuant to this paragraph, that
39 contamination from the spill or discharge persists that may cause

1 the waste of commercial fish or shellfish as regulated by Section
2 7701.

3 (g) To the extent feasible, the director shall consult with
4 representatives of commercial and recreational fishing associations
5 and subsistence fishing communities regarding the extent and
6 duration of a closure, testing protocols, and findings. If a spill or
7 discharge occurs within the lands governed by a Native American
8 tribe or affects waters flowing through tribal lands, or tribal
9 fisheries, the director shall consult with the affected tribal
10 governments.

11 (h) The director shall seek full reimbursement from the
12 responsible party or parties for the spill or discharge for all
13 reasonable costs incurred by the department in carrying out this
14 section, including, but not limited to, all testing.

15 SEC. 2. Section 8670.3 of the Government Code is amended
16 to read:

17 8670.3. Unless the context requires otherwise, the following
18 definitions shall govern the construction of this chapter:

19 (a) "Administrator" means the administrator for oil spill response
20 appointed by the Governor pursuant to Section 8670.4.

21 (b) (1) "Best achievable protection" means the highest level of
22 protection that can be achieved through both the use of the best
23 achievable technology and those manpower levels, training
24 procedures, and operational methods that provide the greatest
25 degree of protection achievable. The administrator's determination
26 of which measures provide the best achievable protection shall be
27 guided by the critical need to protect valuable natural resources
28 and state waters, while also considering all of the following:

29 (A) The protection provided by the measure.

30 (B) The technological achievability of the measure.

31 (C) The cost of the measure.

32 (2) The administrator shall not use a cost-benefit or
33 cost-effectiveness analysis or any particular method of analysis in
34 determining which measures provide the best achievable protection.
35 The administrator shall instead, when determining which measures
36 provide best achievable protection, give reasonable consideration
37 to the protection provided by the measures, the technological
38 achievability of the measures, and the cost of the measures when
39 establishing the requirements to provide the best achievable
40 protection for the natural resources of the state.

(c) (1) “Best achievable technology” means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use anywhere in the world.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(d) “California oil spill contingency plan” means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(e) “Dedicated response resources” means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for any other activity that would adversely affect the ability of that equipment and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(f) “Environmentally sensitive area” means an area defined pursuant to the applicable area contingency plans or geographic response plans, as created and revised by the Coast Guard, the United States Environmental Protection Agency, and the administrator.

(g) (1) “Facility” means any of the following located in state waters or located where an oil spill may impact state waters:

(A) A building, structure, installation, or equipment used in oil exploration, oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, or oil transportation.

(B) A marine terminal.

(C) A pipeline that transports oil.

(D) A railroad that transports oil as cargo.

(E) A drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(2) “Facility” does not include any of the following:

(A) A vessel, except a vessel located and used for any purpose described in subparagraph (E) of paragraph (1).

(B) An owner or operator subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(C) Operations on a farm, nursery, logging site, or construction site that are either of the following:

(i) Do not exceed 20,000 gallons in a single storage tank.

(ii) Have a useable tank storage capacity not exceeding 75,000 gallons.

(D) A small craft refueling dock.

(h) “Local government” means a chartered or general law city, a chartered or general law county, or a city and county.

(i) (1) “Marine terminal” means any facility used for transferring oil to or from a tank ship or tank barge.

(2) “Marine terminal” includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (n) of Section 25270.2 of the Health and Safety Code.

(j) “*Marine waters*” means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

~~(j)~~

(k) “Mobile transfer unit” means a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact waters of the state.

~~(k)~~

(l) “Nondedicated response resources” means those response resources identified by an Oil Spill Response Organization for oil spill response activities that are not dedicated response resources.

~~(l)~~

(m) “Nonpersistent oil” means a petroleum-based oil, such as gasoline or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645 degrees Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700 degrees Fahrenheit.

~~(m)~~

(n) “Nontank vessel” means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

~~(n)~~

(o) “Oil” means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

~~(p)~~

(p) “Oil spill cleanup agent” means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

~~(p)~~

(q) “Oil spill contingency plan” or “contingency plan” means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

~~(q)~~

(r) (1) ~~“Oil-Spill-Response-Organization”~~ *spill response organization*” or “OSRO” means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) “OSRO” does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or equipment that are only ancillary to containment, cleanup, or removal activities.

~~(r)~~

(s) (1) “Owner” or “operator” means any of the following:

(A) In the case of a vessel, a person who owns, has an ownership interest in, operates, charts by demise, or leases the vessel.

(B) In the case of a facility, a person who owns, has an ownership interest in, or operates the facility.

(C) Except as provided in subparagraph (D), in the case of a vessel or facility, where title or control was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, a person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government that acquired ownership or control of a vessel or facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into waters of the state.

(2) “Owner” or “operator” does not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect the person’s security interest in the vessel or facility.

(3) “Operator” does not include a person who owns the land underlying a facility or the facility itself if the person is not involved in the operations of the facility.

~~(s)~~

(t) “Person” means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. “Person” also includes a city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

~~(t)~~

(u) “Pipeline” means a pipeline used at any time to transport oil.

~~(tt)~~

(v) “Railroad” means a railroad, railway, rail car, rolling stock, or train.

~~(v)~~

(w) “Rated OSRO” means an OSRO that has received a satisfactory rating from the administrator for a particular rating level established pursuant to Section 8670.30.

~~(w)~~

(x) “Response efforts” means rendering care, assistance, or advice in accordance with the National Contingency Plan, the California oil spill contingency plan, or at the direction of the administrator, the United States Environmental Protection Agency, or the United States Coast Guard in response to a spill or a threatened spill into waters of the state.

~~(x)~~

(y) “Responsible party” or “party responsible” means any of the following:

1 (1) The owner or transporter of oil or a person or entity accepting
2 responsibility for the oil.

3 (2) The owner, operator, or lessee of, or a person that charters
4 by demise, a vessel or facility, or a person or entity accepting
5 responsibility for the vessel or facility.

6 ~~(y)~~

7 (z) “Small craft” means a vessel, other than a tank ship or tank
8 barge, that is less than 20 meters in length.

9 ~~(z)~~

10 (aa) “Small craft refueling dock” means a waterside operation
11 that dispenses only nonpersistent oil in bulk and small amounts of
12 persistent lubrication oil in containers primarily to small craft and
13 meets both of the following criteria:

14 (1) Has tank storage capacity not exceeding 20,000 gallons in
15 any single storage tank or tank compartment.

16 (2) Has total usable tank storage capacity not exceeding 75,000
17 gallons.

18 ~~(aa)~~

19 (ab) “Small marine fueling facility” means either of the
20 following:

21 (1) A mobile transfer unit.

22 (2) A fixed facility that is not a marine terminal, that dispenses
23 primarily nonpersistent oil, that may dispense small amounts of
24 persistent oil, primarily to small craft, and that meets all of the
25 following criteria:

26 (A) Has tank storage capacity greater than 20,000 gallons but
27 not more than 40,000 gallons in any single storage tank or storage
28 tank compartment.

29 (B) Has total usable tank storage capacity not exceeding 75,000
30 gallons.

31 (C) Had an annual throughput volume of over-the-water transfers
32 of oil that did not exceed 3,000,000 gallons during the most recent
33 preceding 12-month period.

34 ~~(ab)~~

35 (ac) “Spill,” “discharge,” or “oil spill” means a release of any
36 amount of oil into waters of the state that is not authorized by a
37 federal, state, or local government entity.

38 ~~(ae)~~

1 ~~(ad)~~ “Tank barge” means a vessel that carries oil in commercial
2 quantities as cargo but is not equipped with a means of
3 self-propulsion.

4 ~~(ad)~~

5 ~~(ae)~~ “Tank ship” means a self-propelled vessel that is
6 constructed or adapted for the carriage of oil in bulk or in
7 commercial quantities as cargo.

8 ~~(ae)~~

9 ~~(af)~~ “Tank vessel” means a tank ship or tank barge.

10 ~~(af)~~

11 ~~(ag)~~ “Vessel” means a watercraft or ship of any kind, including
12 every structure adapted to be navigated from place to place for the
13 transportation of merchandise or persons.

14 ~~(ag)~~

15 ~~(ah)~~ “Vessel carrying oil as secondary cargo” means a vessel
16 that does not carry oil as a primary cargo, but does carry oil as
17 cargo. The administrator may establish minimum oil volume
18 amounts or other criteria by regulations.

19 ~~(ah)~~

20 ~~(ai)~~ “Waters of the state” or “state waters” means any surface
21 water, including saline waters, marine waters, and freshwaters,
22 within the boundaries of the state but does not include groundwater.

23 SEC. 3. Section 8670.25.5 of the Government Code is amended
24 to read:

25 8670.25.5. (a) (1) Without regard to intent or negligence, any
26 party responsible for the discharge or threatened discharge of oil
27 in waters of the state shall report the discharge immediately to the
28 Office of Emergency Services pursuant to Section 25510 of the
29 Health and Safety Code.

30 (2) If the information initially reported pursuant to paragraph
31 (1) was inaccurate or incomplete, or if the quantity of oil discharged
32 has changed, any party responsible for the discharge or threatened
33 discharge of oil in waters of the state shall report the updated
34 information immediately to the Office of Emergency Services
35 pursuant to paragraph (1). The report shall contain the accurate or
36 complete information, or the revised quantity of oil discharged.

37 (b) Immediately upon receiving notification pursuant to
38 subdivision (a), the Office of Emergency Services shall notify the
39 administrator, the State Lands Commission, the California Coastal
40 Commission, the California regional water quality control board

1 having jurisdiction over the location of the discharged oil, and the
2 appropriate local governmental agencies in the area surrounding
3 the discharged oil, and take the actions required by subdivision
4 (d) of Section 8589.7. If the spill has occurred within the
5 jurisdiction of the San Francisco Bay Conservation and
6 Development Commission, the Office of Emergency Services shall
7 notify that commission. Each public agency specified in this
8 subdivision shall adopt an internal protocol over communications
9 regarding the discharge of oil and file the internal protocol with
10 the Office of Emergency Services.

11 (c) The 24-hour emergency telephone number of the Office of
12 Emergency Services shall be posted at every railroad dispatch,
13 pipeline operator control center, marine terminal, area of control
14 of every other facility, and on the bridge of every tank ship in
15 marine waters.

16 (d) Except as otherwise provided in this section and Section
17 8589.7, a notification made pursuant to this section shall satisfy
18 any immediate notification requirement contained in any permit
19 issued by a permitting agency.

20 SEC. 4. Section 8670.27 of the Government Code is amended
21 to read:

22 8670.27. (a) (1) All potentially responsible parties for an oil
23 spill and all of their agents and employees and all state and local
24 agencies shall carry out response and cleanup operations in
25 accordance with the applicable contingency plan, unless directed
26 otherwise by the administrator, the United States Coast Guard, or
27 the United States Environmental Protection Agency.

28 (2) Except as provided in subdivision (b), the responsible party,
29 potentially responsible parties, their agents and employees, the
30 operators of all vessels docked at a marine facility that is the source
31 of a discharge, and all state and local agencies shall carry out spill
32 response consistent with the California oil spill contingency plan
33 or other applicable federal, state, or local spill response plans, and
34 owners and operators shall carry out spill response consistent with
35 their applicable response contingency plans, unless directed
36 otherwise by the administrator, the United States Coast Guard, or
37 the United States Environmental Protection Agency.

38 (b) If a responsible party or potentially responsible party
39 reasonably, and in good faith, believes that the directions or orders
40 given by the administrator pursuant to subdivision (a) will

1 substantially endanger the public safety or the environment, the
2 party may refuse to act in compliance with the orders or directions
3 of the administrator. The responsible party or potentially
4 responsible party shall state, at the time of the refusal, the reasons
5 why the party refuses to follow the orders or directions of the
6 administrator. The responsible party or potentially responsible
7 party shall give the administrator written notice of the reasons for
8 the refusal within 48 hours of refusing to follow the orders or
9 directions of the administrator. In any civil or criminal proceeding
10 commenced pursuant to this section, the burden of proof shall be
11 on the responsible party or potentially responsible party to
12 demonstrate, by clear and convincing evidence, why the refusal
13 to follow the orders or directions of the administrator was justified
14 under the circumstances.

15 SEC. 5. Section 8670.29 of the Government Code is amended
16 to read:

17 8670.29. (a) In accordance with the rules, regulations, and
18 policies established by the administrator pursuant to Section
19 8670.28, an owner or operator of a facility, small marine fueling
20 facility, or mobile transfer unit, or an owner or operator of a tank
21 vessel, nontank vessel, or vessel carrying oil as secondary cargo,
22 while operating in the waters of the state or where a spill could
23 impact waters of the state, shall have an oil spill contingency plan
24 that has been submitted to, and approved by, the administrator
25 pursuant to Section 8670.31. An oil spill contingency plan shall
26 ensure the undertaking of prompt and adequate response and
27 removal action in case of a spill, shall be consistent with the
28 California oil spill contingency plan, and shall not conflict with
29 the National Oil and Hazardous Substances Pollution Contingency
30 Plan (NCP).

31 (b) An oil spill contingency plan shall, at a minimum, meet all
32 of the following requirements:

33 (1) Be a written document, reviewed for feasibility and
34 executability, and signed by the owner or operator, or his or her
35 designee.

36 (2) Provide for the use of a recognized incident command system
37 to be used during a spill.

38 (3) Provide procedures for reporting oil spills to local, state,
39 and federal agencies, and include a list of contacts to call in the
40 event of a drill, threatened spill, or spill.

1 (4) Describe the communication plans to be used during a spill,
2 if different from those used by a recognized incident command
3 system.

4 (5) Describe the strategies for the protection of environmentally
5 sensitive areas.

6 (6) Identify at least one rated OSRO for each rating level
7 established pursuant to Section 8670.30. Each identified rated
8 OSRO shall be directly responsible by contract, agreement, or
9 other approved means to provide oil spill response activities
10 pursuant to the oil spill contingency plan. A rated OSRO may
11 provide oil spill response activities individually, or in combination
12 with another rated OSRO, for a particular owner or operator.

13 (7) Identify a qualified individual.

14 (8) Provide the name, address, and telephone and facsimile
15 numbers for an agent for service of process, located within the
16 state and designated to receive legal documents on behalf of the
17 owner or operator.

18 (9) Provide for training and drills on elements of the plan at
19 least annually, with all elements of the plan subject to a drill at
20 least once every three years.

21 (c) An oil spill contingency plan for a vessel shall also include,
22 but is not limited to, all of the following requirements:

23 (1) The plan shall be submitted to the administrator at least
24 seven days prior to the vessel entering waters of the state.

25 (2) The plan shall provide evidence of compliance with the
26 International Safety Management Code, established by the
27 International Maritime Organization, as applicable.

28 (3) If the oil spill contingency plan is for a tank vessel, the plan
29 shall include both of the following:

30 (A) The plan shall specify oil and petroleum cargo capacity.

31 (B) The plan shall specify the types of oil and petroleum cargo
32 carried.

33 (4) If the oil spill contingency plan is for a nontank vessel, the
34 plan shall include both of the following:

35 (A) The plan shall specify the type and total amount of fuel
36 carried.

37 (B) The plan shall specify the capacity of the largest fuel tank.

38 (d) An oil spill contingency plan for a facility shall also include,
39 but is not limited to, all of the following provisions, as appropriate:

40 (1) Provisions for site security and control.

1 (2) Provisions for emergency medical treatment and first aid.

2 (3) Provisions for safety training, as required by state and federal
3 safety laws for all personnel likely to be engaged in oil spill
4 response.

5 (4) Provisions detailing site layout and locations of
6 environmentally sensitive areas requiring special protection.

7 (5) Provisions for vessels that are in the operational control of
8 the facility for loading and unloading.

9 (e) Unless preempted by federal law or regulations, an oil spill
10 contingency plan for a railroad also shall include, but is not limited
11 to, all of the following:

12 (1) A list of the types of train cars that may make up the consist.

13 (2) A list of the types of oil and petroleum products that may
14 be transported.

15 (3) A map of track routes and facilities.

16 (4) A list, description, and map of any prestaged spill response
17 equipment and personnel for deployment of the equipment.

18 (f) The oil spill contingency plan shall be available to response
19 personnel and to relevant state and federal agencies for inspection
20 and review.

21 (g) The oil spill contingency plan shall be reviewed periodically
22 and updated as necessary. All updates shall be submitted to the
23 administrator pursuant to this article.

24 (h) In addition to the regulations adopted pursuant to Section
25 8670.28, the administrator shall adopt regulations and guidelines
26 to implement this section. The regulations and guidelines shall
27 provide for the best achievable protection of waters and natural
28 resources of the state. The administrator may establish additional
29 oil spill contingency plan requirements, including, but not limited
30 to, requirements based on the different geographic regions of the
31 state. All regulations and guidelines shall be developed in
32 consultation with the Oil Spill Technical Advisory Committee.

33 (i) Notwithstanding subdivision (a) and paragraph (6) of
34 subdivision (b), a vessel or facility operating where a spill could
35 impact state waters that are not tidally influenced shall identify a
36 rated OSRO in the contingency plan no later than January 1, 2016.

37 SEC. 6. Section 8670.31 of the Government Code is amended
38 to read:

1 8670.31. (a) Each oil spill contingency plan required under
2 this article shall be submitted to the administrator for review and
3 approval.

4 (b) The administrator shall review each submitted contingency
5 plan to determine whether it complies with the administrator's
6 rules, policies, and regulations adopted pursuant to ~~Section~~ *Sections*
7 8670.28 and 8670.29. The administrator may issue a preliminary
8 approval pending final approval or disapproval.

9 (c) Each contingency plan submitted shall be approved or
10 disapproved within 30 days after receipt by the administrator. The
11 administrator may approve or disapprove portions of a plan. A
12 plan is not deemed approved until all portions are approved
13 pursuant to this section. The disapproved portion shall be subject
14 to the procedures contained in subdivision (d).

15 (d) If the administrator finds the submitted contingency plan is
16 inadequate under the rules, policies, and regulations of the
17 administrator, the plan shall be returned to the submitter with
18 written reasons why the plan was found inadequate and, if
19 practicable, suggested modifications or alternatives, if appropriate.
20 The submitter shall submit a new or modified plan within 30 days
21 after the earlier plan was returned, responding to the findings and
22 incorporating any suggested modifications. The resubmittal shall
23 be treated as a new submittal and processed according to the
24 provisions of this section, except that the resubmitted plan shall
25 be deemed approved unless the administrator acts pursuant to
26 subdivision (c).

27 (e) The administrator may make inspections and require drills
28 of any oil spill contingency plan that is submitted.

29 (f) After the plan has been approved, it shall be resubmitted
30 every five years thereafter. The administrator may require earlier
31 or more frequent resubmission, if warranted. Circumstances that
32 would require an earlier resubmission include, but are not limited
33 to, changes in regulations, new oil spill response technologies,
34 deficiencies identified in the evaluation conducted pursuant to
35 Section 8670.19, or a need for a different oil spill response because
36 of increased need to protect endangered species habitat. The
37 administrator may deny approval of the resubmitted plan if it is
38 no longer considered adequate according to the adopted rules,
39 regulations, and policies of the administrator at the time of
40 resubmission.

(g) Each owner or operator of a tank vessel, nontank vessel, vessel carrying oil as a secondary cargo, or facility who is required to file an oil spill response plan or update pursuant to provisions of federal law regulating oil spill response plans shall submit, for informational purposes only and upon request of the administrator, a copy of that plan or update to the administrator at the time that it is approved by the relevant federal agency.

SEC. 7. Section 8670.37.58 of the Government Code is amended to read:

8670.37.58. (a) A nontank vessel shall not enter waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars (\$300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel.

(b) Notwithstanding subdivision (a), the administrator may establish a lower standard of financial responsibility for a nontank vessel that has a carrying capacity of 6,500 barrels of oil or less, or for a nontank vessel that is owned and operated by California or a federal agency and has a carrying capacity of 7,500 barrels of oil or less. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into waters of the state. The administrator shall not set a standard that is less than the expected cleanup costs and damages from an oil spill into waters of the state.

(c) A nontank vessel fee shall be submitted along with the application for the certificate, as required pursuant to Section 8670.41.

(d) The administrator may adopt regulations to implement this section.

SEC. 8. Section 8670.54 of the Government Code is amended to read:

8670.54. (a) The Oil Spill Technical Advisory Committee, hereafter in this article, the committee, is hereby established to provide public input and independent judgment of the actions of the administrator. The committee shall consist of 14 members, of whom eight shall be appointed by the Governor, three by the

1 Speaker of the Assembly, and three by the Senate Committee on
2 Rules. The appointments shall be made in the following manner:

3 (1) The Speaker of the Assembly and Senate Committee on
4 Rules shall each appoint a member who shall be a representative
5 of the public.

6 (2) The Governor shall appoint a member who has a
7 demonstrable knowledge of marine transportation.

8 (3) The Speaker of the Assembly and the Senate Committee on
9 Rules shall each appoint two members who have demonstrable
10 knowledge of environmental protection and the study of
11 ecosystems.

12 (4) The Governor shall appoint a member who has served as a
13 local government elected official or who has worked for a local
14 government.

15 (5) The Governor shall appoint a member who has experience
16 in oil spill response and prevention programs.

17 (6) The Governor shall appoint a member who has been
18 employed in the petroleum industry.

19 (7) The Governor shall appoint a member who has worked in
20 state government.

21 (8) The Governor shall appoint a member who has demonstrable
22 knowledge of the dry cargo vessel industry.

23 (9) The Governor shall appoint a member who has demonstrable
24 knowledge of the railroad industry.

25 (10) The Governor shall appoint a member who has
26 demonstrable knowledge of the oil production industry.

27 (b) The committee shall meet as often as required, but at least
28 twice per year. Members shall be paid one hundred dollars (\$100)
29 per day for each meeting and all necessary travel expenses at state
30 per diem rates.

31 (c) The administrator and any personnel the administrator
32 determines to be appropriate shall serve as staff to the committee.

33 (d) A chair and vice chair shall be elected by a majority vote of
34 the committee.

35 SEC. 9. Section 8670.56.5 of the Government Code is amended
36 to read:

37 8670.56.5. (a) A responsible party, as defined in Section
38 8670.3, shall be absolutely liable without regard to fault for any
39 damages incurred by any injured ~~party~~ *person* that arise out of, or
40 are caused by, a spill.

1 (b) A responsible party is not liable to an injured ~~party~~ *person*
2 under this section for any of the following:

3 (1) Damages, other than costs of removal incurred by the state
4 or a local government, caused solely by any act of war, hostilities,
5 civil war, or insurrection or by an unanticipated grave natural
6 disaster or other act of God of an exceptional, inevitable, and
7 irresistible character, that could not have been prevented or avoided
8 by the exercise of due care or foresight.

9 (2) Damages caused solely by the negligence or intentional
10 malfeasance of that injured ~~party~~ *person*.

11 (3) Damages caused solely by the criminal act of a third party
12 other than the defendant or an agent or employee of the defendant.

13 (4) Natural seepage not caused by a responsible party.

14 (5) Discharge or leaking of oil or natural gas from a private
15 pleasure boat or vessel.

16 (6) Damages that arise out of, or are caused by, a discharge that
17 is authorized by a state or federal permit.

18 (c) The defenses provided in subdivision (b) shall not be
19 available to a responsible party who fails to comply with Sections
20 8670.25, 8670.25.5, 8670.27, and 8670.62.

21 (d) Upon motion and sufficient showing by a party deemed to
22 be a responsible party under this section, the court shall join to the
23 action any other party who may be a responsible party under this
24 section.

25 (e) In determining whether a party is a responsible party under
26 this section, the court shall consider the results of chemical or other
27 scientific tests conducted to determine whether oil or other
28 substances produced, discharged, or controlled by the defendant
29 matches the oil or other substance that caused the damage to the
30 injured ~~party~~ *person*. The defendant shall have the burden of
31 producing the results of tests of samples of the substance that
32 caused the injury and of substances for which the defendant is
33 responsible, unless it is not possible to conduct the tests because
34 of unavailability of samples to test or because the substance is not
35 one for which reliable tests have been developed. At the request
36 of a party, any other party shall provide samples of oil or other
37 substances within its possession or control for testing.

38 (f) The court may award reasonable costs of the suit, attorneys'
39 fees, and the costs of necessary expert witnesses to a prevailing
40 plaintiff. The court may award reasonable costs of the suit and

1 attorneys' fees to a prevailing defendant if the court finds that the
2 plaintiff commenced or prosecuted the suit pursuant to this section
3 in bad faith or solely for purposes of harassing the defendant.

4 (g) This section does not prohibit a person from bringing an
5 action for damages caused by oil or by exploration, under any
6 other provision or principle of law, including, but not limited to,
7 common law. However, damages shall not be awarded pursuant
8 to this section to an injured ~~party~~ *person* for loss or injury for which
9 the ~~party~~ *person* is or has been awarded damages under any other
10 provision or principle of law. Subdivision (b) does not create a
11 defense not otherwise available regarding an action brought under
12 any other provision or principle of law, including, but not limited
13 to, common law.

14 (h) Damages for which responsible parties are liable under this
15 section include the following:

16 (1) All costs of response, containment, cleanup, removal, and
17 treatment, including, but not limited to, monitoring and
18 administration costs incurred pursuant to the California oil spill
19 contingency plan or actions taken pursuant to directions by the
20 administrator.

21 (2) Injury to, or economic losses resulting from destruction of
22 or injury to, real or personal property, which shall be recoverable
23 by any claimant who has an ownership or leasehold interest in
24 property.

25 (3) Injury to, destruction of or loss of, natural resources,
26 including, but not limited to, the reasonable costs of rehabilitating
27 wildlife, habitat, and other resources and the reasonable costs of
28 assessing that injury, destruction, or loss, in an action brought by
29 the state, a county, city, or district. Damages for the loss of natural
30 resources may be determined by any reasonable method, including,
31 but not limited to, determination according to the costs of restoring
32 the lost resource.

33 (4) Loss of subsistence use of natural resources, which shall be
34 recoverable by a claimant who so uses natural resources that have
35 been injured, destroyed, or lost.

36 (5) Loss of taxes, royalties, rents, or net profit shares caused by
37 the injury, destruction, loss, or impairment of use of real property,
38 personal property, or natural resources.

39 (6) Loss of profits or impairment of earning capacity due to the
40 injury, destruction, or loss of real property, personal property, or

1 natural resources, which shall be recoverable by any claimant who
2 derives at least 25 percent of his or her earnings from the activities
3 that utilize the property or natural resources, or, if those activities
4 are seasonal in nature, 25 percent of his or her earnings during the
5 applicable season.

6 (7) Loss of use and enjoyment of natural resources, public
7 beaches, and other public resources or facilities, in an action
8 brought by the state, a county, city, or district.

9 (i) Except as provided in Section 1431.2 of the Civil Code,
10 liability under this section shall be joint and several. However, this
11 section does not bar a cause of action that a responsible party has
12 or would have, by reason of subrogation or otherwise, against a
13 person.

14 (j) This section does not apply to claims for damages for
15 personal injury or wrongful death, and does not limit the right of
16 a person to bring an action for personal injury or wrongful death
17 pursuant to any provision or principle of law.

18 (k) Payments made by a responsible party to cover liabilities
19 arising from a discharge of oil, whether under this division or any
20 other provision of federal, state, or local law, shall not be charged
21 against royalties, rents, or net profits owed to the United States,
22 the state, or any other public entity.

23 (l) An action that a private or public individual or entity may
24 have against a responsible party under this section may be brought
25 directly by the individual or entity or by the state on behalf of the
26 individual or entity. However, the state shall not pursue an action
27 on behalf of a private individual or entity that requests the state
28 not to pursue that action.

29 (m) For purposes of this section, “vessels” means vessels as
30 defined in Section 21 of the Harbors and Navigation Code.

31 SEC. 10. Section 8670.56.6 of the Government Code is
32 amended to read:

33 8670.56.6. (a) (1) Except as provided in subdivisions (b) and
34 (d), and subject to subdivision (c), a person, including, but not
35 limited to, an oil spill ~~cooperative~~, *response organization*, its
36 agents, subcontractors, or employees, shall not be liable under this
37 chapter or the laws of the state to any person for costs, damages,
38 or other claims or expenses as a result of actions taken or omitted
39 in good faith in the course of response efforts.

1 (2) The qualified immunity under this section shall not apply
2 to any response efforts that are inconsistent with the following:

3 (A) The directions of the unified command, consisting of at
4 least the Coast Guard and the administrator.

5 (B) In the absence of a unified command, the directions of the
6 administrator pursuant to Section 8670.27.

7 (C) In the absence of directions pursuant to subparagraph (A)
8 or (B), applicable oil spill contingency plans implemented under
9 this division.

10 (3) This section does not, in any manner or respect, affect or
11 impair any cause of action against or any liability of any party or
12 parties responsible for the spill, for the discharged oil, or for the
13 vessel, terminal, pipeline, or facility from which the oil was
14 discharged. The responsible party or parties shall remain liable for
15 any and all damages arising from the discharge, including damages
16 arising from improperly carried out response efforts, as otherwise
17 provided by law.

18 (b) This section does not, in any manner or respect, affect or
19 impair any cause of action against or any liability of any party or
20 parties responsible for the spill, or the responsible party's agents,
21 employees, or subcontractors, except persons immunized under
22 subdivision (a) for response efforts, for the discharged oil, or for
23 the vessel, terminal, pipeline, or facility from which the oil was
24 discharged.

25 (c) The responsible party or parties shall be subject to both of
26 the following:

27 (1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5,
28 or any other law, be strictly and jointly and severally liable for all
29 damages arising pursuant to subdivision (h) of Section 8670.56.5
30 from the response efforts of its agents, employees, subcontractors,
31 or an oil spill-cooperative *response organization* of which it is a
32 member or with which it has a contract or other arrangement for
33 cleanup of its oil spills, unless it would have a defense to the
34 original spill.

35 (2) Remain strictly liable for any and all damages arising from
36 the response efforts of a person other than a person specified in
37 paragraph (1).

38 (d) This section does not immunize a-cooperative *an oil spill*
39 *response organization* or any other person from liability for acts

1 of gross negligence or willful misconduct in connection with
2 response efforts.

3 (e) This section does not apply to any action for personal injury
4 or wrongful death.

5 ~~(f) As used in this section, a “cooperative” means an~~
6 ~~organization of private persons that is established for the primary~~
7 ~~purpose and activity of preventing or rendering care, assistance,~~
8 ~~or advice in response to a spill or threatened spill.~~

9 (f) [Reserved]

10 (g) Except for the responsible party, membership in—~~a~~
11 ~~cooperative~~ *an oil spill response organization* shall not be grounds,
12 in and of itself, for liability resulting from response efforts of the
13 ~~cooperative.~~ *oil spill response organization.*

14 (h) For purposes of this section, there shall be a rebuttable
15 presumption that an act or omission described in subdivision (a)
16 was taken in good faith.

17 (i) In any situation in which immunity is granted pursuant to
18 subdivision (a) and a responsible party is not liable, is not liable
19 for noneconomic damages caused by another, or is partially or
20 totally insolvent, the fund provided for in Article 7 (commencing
21 with Section 8670.46) shall reimburse, in accordance with its terms,
22 claims of any injured ~~party~~ *person* for which a person who is
23 granted immunity pursuant to this section would otherwise be
24 liable.

25 (j) (1) The immunity granted by this section shall only apply
26 to response efforts that are undertaken after the administrator
27 certifies that contracts with qualified and responsible ~~persons~~
28 *contractors* are in place to ensure an adequate and expeditious
29 response to any foreseeable oil spill that may occur in waters of
30 the state for which the responsible party (A) cannot be identified
31 or (B) is unable or unwilling to respond, contain, and clean up the
32 oil spill in an adequate and timely manner. In negotiating these
33 contracts, the administrator shall procure, to the maximum extent
34 practicable, the services of persons who are willing to respond to
35 oil spills with no, or lesser, immunity than that conferred by this
36 section, but, in no event, a greater immunity. The administrator
37 shall make the certification required by this subdivision on an
38 annual basis. Upon certification, the immunity conferred by this
39 section shall apply to all response efforts undertaken during the
40 calendar year to which the certification applies. In the absence of

1 the certification required by this subdivision, the immunity
2 conferred by this section shall not attach to any response efforts
3 undertaken by any person in waters of the state.

4 (2) In addition to the authority to negotiate contracts described
5 in paragraph (1), the administrator may also negotiate and enter
6 into indemnification agreements with qualified and financially
7 responsible ~~persons~~ *contractors* to respond to oil spills that may
8 occur in waters of the state for which the responsible party (A)
9 cannot be identified or (B) is unable or unwilling to respond,
10 contain, and clean up the oil spill in an adequate and timely manner.

11 (3) The administrator may indemnify response contractors for
12 (A) all damages payable by means of settlement or judgment that
13 arise from response efforts to which the immunity conferred by
14 this section would otherwise apply, and (B) reasonably related
15 legal costs and expenses incurred by the responder, provided that
16 indemnification shall only apply to response efforts undertaken
17 after the expiration of any immunity that may exist as the result
18 of the contract negotiations authorized in this subdivision. In
19 negotiating these contracts, the administrator shall procure, to the
20 maximum extent practicable, the services of persons who are
21 willing to respond to oil spills with no, or as little, right to
22 indemnification as possible. All indemnification shall be paid by
23 the administrator from the Oil Spill Response Trust Fund.

24 (4) (A) The contracts required by this section, and any other
25 contracts entered into by the administrator for response,
26 containment, or cleanup of an existing spill, or for response of an
27 imminent threat of a spill, the payment of which is to be made
28 from the Oil Spill Response Trust Fund created pursuant to Section
29 8670.46, shall be exempt from Part 2 (commencing with Section
30 10100) of Division 2 of the Public Contract Code and Article 6
31 (commencing with Section 999) of Chapter 6 of Division 4 of the
32 Military and Veterans Code.

33 (B) The exemption specified in subparagraph (A) applies only
34 to contracts for which the services are used for a period of less
35 than 90 days, cumulatively, per year.

36 (C) This paragraph shall not be construed as limiting the
37 administrator's authority to exercise the emergency powers granted
38 pursuant to subdivision (c) of Section 8670.62, including the
39 authority to enter into emergency contracts that are exempt from
40 approval by the Department of General Services.

(k) (1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may extend, upon making all the following findings, the period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated resources, (ii) threaten already contaminated resources with substantial additional contamination, or (iii) otherwise endanger the public health and safety or harm the environment.

(B) The remaining work is of a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) A person or their agents, subcontractors, or employees shall not incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the

1 person's response efforts undertaken during the period of time the
2 immunity applied to those response efforts.

3 (5) The immunity granted under this section shall attach, without
4 the limitation contained in this subdivision, to the response efforts
5 of any person who is not regularly engaged in the business of
6 responding to oil spills. A person who is not regularly engaged in
7 the business of responding to oil spills includes, but is not limited
8 to, (A) a person who is primarily dedicated to the preservation and
9 rehabilitation of wildlife and (B) a person who derives his or her
10 livelihood primarily from fishing.

11 SEC. 11. Section 8670.59 of the Government Code is amended
12 to read:

13 8670.59. (a) Any civil action brought pursuant to this chapter,
14 or pursuant to Division 7.8 (commencing with Section 8750) of
15 the Public Resources Code, shall be brought in the county in which
16 the spill, discharge, or violation occurred, the county in which the
17 principal place of business of the defendant is located, or the county
18 in which the defendant is doing business in this state.

19 (b) (1) Notwithstanding any other provision of law, all criminal
20 actions for the prosecution of misdemeanor violations of this
21 chapter or Division 7.8 (commencing with Section 8750) of the
22 Public Resources Code shall be commenced within one year from
23 the date of the discovery of the facts or circumstances that
24 constitute the violation.

25 (2) Notwithstanding any other provision of law, all criminal
26 actions for the prosecution of felony violations of this chapter or
27 Division 7.8 (commencing with Section 8750) of the Public
28 Resources Code shall be commenced within three years from the
29 date of the discovery of the facts or circumstances that constitute
30 the violation.

31 (c) Notwithstanding any other provision of law, except as
32 provided in subdivision (d), any action to recover civil damages
33 or penalties shall be commenced within three years from the date
34 of discovery of the facts or circumstances that constitute a violation
35 of this chapter or Division 7.8 (commencing with Section 8750)
36 of the Public Resources Code.

37 (d) Any action to recover civil damages or penalties pursuant
38 to paragraph (3), (4), (5), (6), or (7) of subdivision (h) of Section
39 8670.56.5 because of effects on natural resources shall be

1 commenced within five years from the date of the discovery of
2 the facts or circumstances that are the basis for the cause of action.

3 (e) Any action to compel the removal of oil or the restoration
4 and rehabilitation of wildlife and wildlife habitat shall be
5 commenced within five years from the date of discovery of the
6 facts or circumstances that constitute a violation of this chapter or
7 Division 7.8 (commencing with Section 8750) of the Public
8 Resources Code.

9 (f) For purposes of subdivisions (b), (c), (d), and (e), “date of
10 discovery” means the actual date that facts sufficient to establish
11 that a violation of this chapter or Division 7.8 (commencing with
12 Section 8750) of the Public Resources Code has occurred are
13 discovered by a peace officer appointed pursuant to Section 851
14 of the Fish and Game Code.

15 (g) The administrator may adopt regulations prescribing
16 procedures for the implementation of this section.